

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
ASSOCIATE CIRCUIT DIVISION
AT KANSAS CITY**

JACOBS MARSH LLC assignee of)	
Unifund CCR Partners assignee of)	
Chase Manhattan Bank USA NA)	
)	
Plaintiff,)	
vs.,)	Case No. 0916-CV22456
)	
)	DIVISION 26
DIANNE M. MANNARELLI)	
)	
Defendant,)	
)	
)	

JUDGMENT

On December 16, 2010, this matter was called for trial. Plaintiff appeared through counsel, Ryan P. McNearney. Defendant appeared pro se. During the trial of this matter, conflicting testimony, evidence and exhibits were submitted. The Court heard, reviewed and duly considered the testimony and evidence submitted at trial, viewed the witness and carefully evaluated and weighed the credible evidence and testimony presented at trial. The Court took the matter under advisement. Both parties were allowed to submit trial briefs in regard to their respective positions. Defendant filed her trial brief on January 3, 2011 and the Plaintiff filed their brief on January 18, 2011. After reviewing all of the evidence and submitted case law presented during the course of the trial, the Court finds as follows:

Findings of Fact

Defendant entered into a credit card agreement with Chase Manhattan Bank (“Chase”) whereby Chase agreed to extend credit to Defendant and she agreed to pay the amount advanced plus interest. The Plaintiff became the owner and holder of Defendant’s credit card agreement through an assignment from Unifund CCR Partners (“Unifund”) who obtained the assignment from Chase. Plaintiff made written demand on Defendant for the principal balance of \$ 8,650.22, in addition to accrued interest in the amount of \$3,387.63. When Defendant failed to pay the amount requested, Plaintiff filed suit on the credit agreement.

At trial, Plaintiff offered two Exhibits and did not present the custodian of records but rather relied upon the filing of an affidavit prepared in accordance with Section 490.692 RSMo. Exhibit 2, contained fifty-five pages of documents, including: an affidavit of Jacob Adamo; a Bill of Sale from Chase to Unifund; an Accounts Receivable Purchase Agreement from Unifund to Plaintiff; copies of credit card statements about Defendant’s account; an affidavit of Joseph Arena, on behalf of the Plaintiff in this case, indicating that he is the assignor of the loan and that he has personal knowledge that Chase originated the account with the Defendant and that Unifund purchased this account from Chase and that Unifund assigned and transferred the account over unto Plaintiff; a page containing Defendant’s loan and contact information; the terms and conditions of the credit card agreement; a redacted page containing information about Defendant’s account and a statement of Defendant’s account. Exhibit 1 contained the Defendant’s bank statements with cancelled checks that indicated that the Defendant made payments to Chase with the account number referenced throughout Exhibit 2.

The Defendant acknowledges that she has had numerous credit cards over the years and that she could have had a Chase card. She does not recall any specific account numbers. She testified that she does not know whether this Chase account was one of hers or not. She does not recall whether any of those disputes involved this account.

Conclusions of Law

In this case, the court fails to see how Jacob Adamo or Joseph Arena can attest to the identity and the mode of preparation of the documents contained in Exhibit 2 given that those documents were created by Chase, a company for which neither Mr. Adamo or Mr. Arena work. *See C & W Asset Acquisition, LLC v. Somogyi*, 136 S.W.3d 134, 139 (Mo. App. S.D. 2004). Mr. Adamo and Mr. Arena only served as a conduit to the flow of records that came from both Chase and Unifund and cannot testify to the mode of preparation of those documents. *Id.* Allowing a litigant to be the “custodian” of another entity’s records runs contrary to the spirit of the business record exception to the hearsay rule under Section 490.692 and thus challenges the credibility of those documents. *Id.* at 140. Additionally, Missouri courts have held that the business records exception to the hearsay rule applies only to documents generated by the business itself, thus, documents that are part of a file belonging to a holder’s business but were not generated or prepared by the holder in the holder’s ordinary course of business do not fall under the business records exception. *Zundel v. Bommarito*, 778 S.W.2d 954, 958 (Mo. App. E.D. 1989); *Asset Acceptance v. Lodge*, 325 S.W.3d 525, 528 (Mo. App. E.D. 2010)

Although Plaintiff attempts to tie the Defendant to the Chase account through the admission of the Defendant’s cancelled checks that were submitted as Exhibit 1, the

Plaintiff must also establish the link between the Defendant and the second assignee Unifund, who then assigns the account to Plaintiff.

Given the nature of both Plaintiff's and Unifund's business, the court does not find incorporation of the records sufficient to establish their reliability. The fact that Plaintiff and Unifund rely upon such records to try to collect money does not establish that the amounts it seeks to collect are accurate, or that the debts are even still owed. The mere fact that Chase gives Unifund a disc who then gives the disc to the Plaintiff does not provide any guarantees of the trustworthiness of the data on that disc, absent some evidence about how and when the data on the disc was collected, organized and relied upon by Chase.

IT IS THEREFORE ORDERED that judgment is entered in favor of the Defendant.

IT IS SO ORDERED.

DATE

JUDGE KENNETH R. GARRETT III

Copies mailed on February 14, 2011 to:

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